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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

GERALD LAMAR JACKS,

Defendant and Appellant.

E048084

(Super.Ct.No. FSB800316)

OPINION

APPEAL from the Superior Court of San Bernardino County. Bryan Foster,
Judge. Affirmed.

Neil Auwarter, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Pursuant to a plea agreement on March 3, 2009, defendant Gerald Lamar Jacks,
represented by counsel, pled guilty to possession of cocaine base for sale (Health & Saf.
Code, § 11351.5) while armed with a firearm (Pen. Code, § 12022, subd. (c)) (count 2),
and possession of a firearm by a felon (Pen. Code, § 12021, subd. (a)(1)) (count 4). In

return, the remaining allegations were dismissed and defendant was sentenced to the stipulated term of eight years in state prison with credit for time served. Defendant appeals from the judgment. His amended notice of appeal challenges the sentence or other matters occurring after the plea.

I

FACTUAL AND PROCEDURAL BACKGROUND¹

On January 18, 2008, San Bernardino Police Department Detective Travis Walker executed a search warrant at a place advertised as an automobile repair business. When the detective arrived at the location, the property was enclosed with about a six-foot, locked, chain-link fence. Once officers cut the lock to the chain-link fence, they entered the main entrance of the office building. The main door was open, but the security screen door was closed. Looking through the screen door, Detective Walker saw defendant inside the office.

After entering the office, Detective Walker detained defendant and searched his person. The detective found 11 separate bundles of United States currency, totaling \$2,721, in defendant's right front pants pocket. Other officers located another individual, identified as codefendant Gary Welsh, in the bathroom flushing the toilet.² Officers recovered 29 grams of cocaine base from the toilet's pipe. Additional bags of cocaine base were also found in the toilet's drain pipe and septic system. Officers also discovered

¹ The factual background is taken from the preliminary hearing transcript.

² Codefendant Gary Welsh is not a party to this appeal.

4.4 grams of cocaine base in a plastic baggie in the freezer section of the refrigerator.

Pay-owe sheets, several firearms, ammunition, and mail addressed to defendant were also found at the location. While Detective Walker was at the location, he heard the business telephone ring in excess of 30 times and defendant's cellular telephone ring in excess of 15 times.

Based on items recovered from the kitchen of the business, such as two boxes of baking soda, a contour-type bowl with heavy white residue on the bottom of the bowl, and the cocaine base that was hardening in the freezer, Detective Walker concluded there was cocaine base conversion occurring at the location. The detective also determined that the cocaine base was possessed for the purpose of sales.

Following the preliminary hearing, defendant and codefendant Welsh were each held to answer to the complaint.

On June 6, 2008, defendant made his first *Marsden*³ motion to relieve attorney Richard Farquhar. The motion was denied following an in camera hearing. Attorney Farquhar was subsequently replaced by attorney Jon Kendall.

On August 1, 2008, a second amended information was filed against defendant and codefendant Welsh. Defendant was charged with manufacturing cocaine base (Health & Saf. Code, § 11379.6, subd. (a)) (count 1); possession of cocaine base for sale (Health & Saf. Code, § 11351.5) (count 2); possession of a controlled substance while armed with a firearm (Health & Saf. Code, § 11370.1, subd. (a)) (count 3); and

³ *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

possession of a firearm by a felon (Pen. Code, § 12021, subd. (a)(1)) (count 4). The second amended information further alleged that in the commission of counts 1 and 2, defendant was personally armed with a firearm (Pen. Code, § 12022, subd. (c)); that a principal was armed with a handgun (Pen. Code, § 12022, subd. (a)(1)); and that a principal was armed with a firearm (Pen. Code, § 12022, subd. (d)). The second amended information further alleged that defendant had sustained a prior serious or violent felony conviction. (Pen. Code, §§ 667, subd. (b)-(i), 1170.12, subds. (a)-(d).)

On September 12, 2008, defendant brought another *Marsden* motion, based on his second counsel's failure to quash and traverse the search warrant and failure to hire a drug expert. Following an in camera hearing, defendant's *Marsden* motion was denied.

On September 26, 2008, defense attorney Kendall filed a motion to traverse the affidavit in support of the search warrant. On September 29, 2008, defense counsel also filed a motion to discover the identity of the confidential informant. The People subsequently filed their opposition to the motions.

On October 10, 2008, following arguments from counsel, the trial court denied defendant's motion to traverse the search warrant, but granted an in camera hearing on the motion to discover the confidential informant. Following the in camera hearing, the trial court denied defendant's motion to discover the identity of the confidential informant.

On November 14, 2008, defendant made a third *Marsden* motion to relieve attorney Kendall. Following an in camera hearing, defendant's motion was denied.

On November 19, 2008, it came to the court's attention that attorney Kendall had resigned from the conflict defense panel. Attorney Ed Congdon appeared for defendant. On November 25, 2008, defendant requested that conflict panel attorneys be relieved and private counsel be appointed. He also requested a different attorney from the conflict panel as he did not want attorney Congdon to represent him. The court found no good cause to relieve attorney Congdon or the conflict panel.

On February 3, 2009, attorney Congdon was replaced by attorney John-Paul Serrao as defendant's counsel.

On March 3, 2009, defendant pled guilty to possession of cocaine base for sale (Health & Saf. Code, § 11351.5) while armed with a firearm (Pen. Code, § 12022, subd. (c)) (count 2); and possession of a firearm by a felon (Pen. Code, § 12021, subd. (a)(1)) (count 4). In return, the remaining allegations were dismissed and defendant was promised a stipulated term of eight years in state prison.

At the change of plea hearing, the court reviewed the plea form with defendant and explained the constitutional rights he would be waiving by pleading guilty. Defendant indicated that he understood his rights. The court found that defendant had read and understood the plea form; that he understood the nature of the crimes charged against him and the consequences of pleading guilty; that he intelligently waived his constitutional rights; and that he knowingly and freely entered into his plea of guilty and admission to the offenses.

After defendant waived his right to a presentence report, he was immediately sentenced in accordance with the plea agreement and awarded 614 days of credit for time served.

On March 27, 2009, defendant filed a notice of appeal based on the denial of his suppression motion and ineffective assistance of counsel, and he requested a certificate of probable cause. His request for certificate of probable cause was denied. On April 23, 2009, defendant filed an amended notice of appeal based on the sentence or other matters occurring after the plea.

II

DISCUSSION

Defendant appealed and, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493] setting forth a statement of the case, a summary of the facts, and potential arguable issues and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error.

In the absence of a certificate of probable cause, we may not consider the validity of the plea, whether the change of plea was knowingly, intelligently, or voluntarily made, or whether he was deprived of effective assistance of counsel. (Pen. Code, § 1237.5; see also *People v. Stubbs* (1998) 61 Cal.App.4th 243, 244.) In addition, the sentence was

authorized and was imposed in accordance with the terms of the plea agreement. (Health & Saf. Code, § 11351.5; Pen. Code, §§ 12022, subd. (c), 18.)

We have completed our independent review of the record and find no arguable issues.

III

DISPOSITION

The judgment is affirmed.

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RICHLI
J.

We concur:

McKINSTER
Acting P. J.

MILLER
J.